IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2525 OF 2005

Shri Dattu Daji Ther ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Rajan Salvi for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for the Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 19, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. Indeed, the offence in question is a serious offence, however, I find substance in the argument on behalf of the Applicant that only evidence that can connect the Applicant to the commission of the alleged offence is the stated oral dying declaration made by the deceased to the relatives of the deceased, implicating the

Applicant.

3. Learned A.P.P. submitted that in addition to the oral dying declaration made to the relatives of the deceased, there is an independent witness Urmila Arun Kambli, who has also reported about the oral dying declaration made by the deceased. However, on close examination of the statement of Urmila Arun Kambli, it is obvious that she has not personally heard the deceased mentioning about the assault by the Applicant, but has heard about such disclosure made to the relatives of the deceased, which indeed, will be hearsay evidence.

4. Insofar as the prosecution case that the deceased made oral dying declaration to his close relatives, they being interested witnesses, their evidence will have to be tested at the trial. The fact remains that the investigation is complete and charge-sheet has been filed. The Applicant is about 55 years of age and there are no antecedents against the Applicant.

5. Taking overall view of the matter, the

Applicant deserves to be enlarged on bail, but on the following strict conditions:

(a) The Applicant is directed to be released on bail in connection with C.R.No.I-65/2004 registered with Karjat Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten Thousand) with two local sureties in the like amount.

(b) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(c) Applicant shall not enter the jurisdiction of Karjat Police Station during the pendency of the trial.

(d) Applicant shall inform about his place of residence to the Investigating Officer as well as the Trial Court within one week from the date of release. Besides, the Applicant shall report to the nearest Police Station, once in a month on first Saturday of every English Calender Month

between 10.00 a.m. to 1.00 p.m. during the pendency of the trial.

(e) The Applicant shall co-operate for the early disposal of the trial. If the Trial Court is of the opinion that the Applicant is, in any manner, responsible for causing delay in disposal of the trial, that fact be recorded in the Roznama, which can be a ground for cancellation of bail.

6. Application disposed of on the above terms.

A.M.KHANWILKAR, J.